

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY BESS, JR.,

Plaintiff,

No. CIV S-03-2498 GEB DAD P

vs.

EDWARD S. ALAMEDA, JR., et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On February 16, 2006, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within ten days. Defendants have filed objections to the findings and recommendations, and plaintiff has filed a reply.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

1 The court has considered defendants' request in the alternative that this matter be
2 remanded to the magistrate judge with instructions to grant the defendants leave to submit
3 additional evidence in support of their motion. Under the Local Rules of Practice, a moving
4 party is required to file "a notice of motion, motion, accompanying briefs, affidavits, and copies
5 of all documentary evidence that the moving party intends to submit in support of the motion."
6 Local Rule 78-230(b). Although the defendants contend that denying them an opportunity to
7 obtain and submit additional evidence at this time will force them to submit themselves to trial,
8 the record reflects that the magistrate judge has not yet issued a scheduling order in this case and
9 further motion practice is not foreclosed.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations filed February 16, 2006 are adopted in full;
12 and
13 2. Defendants' July 13, 2005 motion for summary judgment is denied.

14 Dated: March 21, 2006

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16 /s/ Garland E. Burrell, Jr.
17 GARLAND E. BURRELL, JR.
18 United States District Judge
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